

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JAMES KENNETH MCCALLUM,	Case No. 3:16-cv-00658-MMD-VPC
Plaintiff,	ORDER
v.	
KOEHN, <i>et al.</i> ,	
Defendants.	

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On September 28, 2017, the Court issued an order dismissing the complaint with leave to amend and directed Plaintiff to file an amended complaint within thirty (30) days. (ECF No. 5 at 7-8). The thirty-day period has now expired, and Plaintiff has not filed an amended complaint or otherwise responded to the Court’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833

1 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*  
2 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
3 failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey  
5 a court order, or failure to comply with local rules, the court must consider several factors:  
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
10 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 In the instant case, the Court finds that the first two factors, the public's interest in  
12 expeditiously resolving this litigation and the Court's interest in managing the docket,  
13 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
14 in favor of dismissal, since a presumption of injury arises from the occurrence of  
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
16 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy  
17 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor  
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
19 the court's order will result in dismissal satisfies the "consideration of alternatives"  
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
21 at 1424. The Court's order requiring Plaintiff to file an amended complaint within thirty  
22 days expressly stated: "It is further ordered that if Plaintiff fails to timely file an amended  
23 complaint curing the deficiencies of the complaint, as outlined in this order, this action will  
24 be dismissed with prejudice for failure to state a claim." (ECF No. 5 at 8). Thus, Plaintiff  
25 had adequate warning that dismissal would result from his noncompliance with the  
26 Court's order to file an amended complaint within thirty days.

27 ///

28 ///

1 It is therefore ordered that this action is dismissed with prejudice based on  
2 Plaintiff's failure to file an amended complaint in compliance with this Court's September  
3 28, 2017, order.

4 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 1) is  
5 denied as moot.

6 It is further ordered that the Clerk of Court enter judgment accordingly.

7  
8 DATED THIS 7<sup>th</sup> day of November 2017.

9  
10 

11 MIRANDA M. DU  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28